

## REMARKS

1. In response to the Office Action mailed April 27, 2009, Applicant respectfully requests reconsideration. Claims 1, 2, 4-9, 14, 20-24, 27-28, 30-31, and 89-118 were last presented for examination. In the outstanding Office Action, claims 1, 2, 4-9, 14, 20-24, 27-28, 30-31, and 89-118 were rejected. No claims were allowed or objected to. By the foregoing Amendments, claims 1, 93, and 108 were amended. No claims have been added. Claims 4-6, 110-112, and 116-118 have been canceled. Thus, upon entry of this paper, claims 1, 2, 7-9, 14, 20-24, 27-28, 30-31, 89-109, and 113-115 remain pending in this application. Claim 1, 93 and 108 are independent claims.

2. Based upon the above Amendments and following Remarks, Applicant respectfully requests that all outstanding rejections be reconsidered and withdrawn.

### *Claim Rejections under 35 U.S.C. § 112*

3. Claims 1-2, 4-9, 14, 20-24, 27-28, 30-31 and 89-92 were rejected under 35 U.S.C. § 112, ¶ 1 as allegedly failing to comply with the written description requirement. Particularly, the Examiner asserted that the recitation of “without manual insertion” in claim 1 is not supported by Applicant’s specification. The Examiner, however, recognized that Applicant’s specification discloses “not inserted or screwed into the bony surface.” (See, Office Action ¶ 2.) The Examiner, however, asserted that this disclosure does not support the phrase “without manual insertion.” (See, Office Action ¶ 2.) Thus, it appears that the Examiner’s objection is with the word “manual” in the claims. Although, Applicant’s disagree with the Examiner, in order to expedite prosecution, Applicant’s have deleted the word “manual” from independent claims 1. Applicant therefore respectfully requests that the Examiner reconsider and withdraw the rejection under 35 U.S.C. §112, ¶ 1.

4. Claims 1-2, 4, 7-9, 14, 20, 24, 27-28, 30-31, 89-93, 98-100, 104-107 were rejected under 35 U.S.C. § 112, ¶ 2 as being allegedly indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Particularly, the Examiner stated that it is “unclear what the applicant means by manual assistance, as the protuberances have to manually inserted within the periosteal pocket against the bone in order for the protuberances to contact the bone to allow for osseointegration.” (See, Office Action ¶ 4.)

5. As amended, independent claim 93 recites “positioning the housing in said pocket such that the at least one protuberance is in direct contact with a surface of the patient’s bone forming the pocket; and allowing osseointegration of the at least one protuberance to occur without insertion of the at least one protuberance into the surface of the patient’s bone forming the pocket.” (*See*, Applicant’s claim 93, as amended, above.) Applicant respectfully submits that the amendments make it clear that, as claimed, the protuberance is not inserted into the surface of the bone forming the pocket, but instead is positioned such that the protuberance abuts the surface of the bone forming the pocket. Applicant therefore respectfully requests that the rejection of independent claim under 35 U.S.C. § 112, ¶ 2 be reconsidered and withdrawn.

6. As amended, independent claim 1, recites “at least a first protuberance and a second protuberance configured to attach to the patient’s bone without insertion of the first or second protuberance into the bone; ...wherein the protuberance is configured to osseointegrate with the patient’s bone and separate at least a portion of said outer surface of said housing from the patient’s bone when said housing is positioned within a pocket formed in the patient’s bone such that the first and second protuberances abut a surface of the bone forming the pocket prior to osseointegration.” (*See*, Applicant’s claim 1, above.) Applicants therefore request that the Examiner reconsider and withdraw the rejection of independent claim 1 under 35 U.S.C. § 112, ¶ 2 for at least similar reasons to those discussed above with regard to independent claim 93.

***Claim Rejections under 35 U.S.C. §§ 102 and 103***

7. Claims 1-2, 4, 7-9, 14, 20, 24, 27-28, 30-31, 89-92, 108-110, and 113-114 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Pub. No. 2002/0019669 to Berrang (hereinafter “Berrang”) or, in the alternative, under 35 U.S.C. § 103(a) as being obvious over Berrang. Claims 5-6, 21-23, 112-113, and 115-118 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Berrang and further in view of U.S. Patent No. 6,840,919 to Håkansson (hereinafter “Håkansson”). Applicant respectfully requests that the rejections be reconsidered and withdrawn for at least the following reasons.

8. Independent claim 1 has been amended to include limitations similar to those of previously pending dependent claim 116. Particularly, as amended, independent claim 1 recites in part, “wherein said first and second protuberances extend from said housing such that a longitudinal axis of the first protuberance and a longitudinal axis of the second protuberance are

at opposing angles of about 45 degrees relative to an implant axis.” (See, Applicant’s claim 1, above.)

9. In rejecting previously pending claim 116, the Examiner recognized that Berrang fails to disclose protuberances at opposing angles. (See, Office Action, para. 15.) Instead the Examiner relied on Håkansson for allegedly curing this defect. Moreover, the Office Action states that “Håkansson teaches that it is known to use flanges and anchoring devices that are disposed at an opposing angle that is approximately 45-85 degrees and in the same plane as set forth in Figures 1 and 2 to provide anchoring means for the implantable device.” (Office Action, at pages 5-6, ¶ 16.) Applicant respectfully disagrees, and submits that for at least the following reasons, Håkansson does not disclose “longitudinal axis of the first protuberance and a longitudinal axis of the second protuberance are at opposing angles of about 45 degrees relative to an implant axis,” as recited in Applicant’s amended claim 1.

10. Figures 1 and 2 appear to be the sole basis for the Examiner’s rejection, as the Examiner has not cited or identified corresponding description of Figures 1 or 2 or any other disclosure in the specification. Although Figure 1 depicts the screws 3 implanted in the bone, the illustrated arms 12 of Håkansson lie in the same plane. Thus, screws 4 inserted into bone 1 are parallel with each other and perpendicular (90 degrees) to the surface of the bone 1. As such, the longitudinal axes of the screws of Håkansson are not at opposing angles, but are illustrated as being parallel with one another. Moreover, because the longitudinal axis of the screws of Håkansson are parallel to one another, they are not at opposing angles of approximately 45 degrees relative to an implant axis.

11. Applicant’s therefore respectfully submit that neither Håkansson nor Berrang, whether taken alone or in combination, anticipate or render obvious “wherein said first and second protuberances extend from said housing such that a longitudinal axis of the first protuberance and a longitudinal axis of the second protuberance are at opposing angles of about 45 degrees relative to an implant axis,” as recited in Applicant’s amended claim 1. Applicant thus respectfully requests that the rejection of independent claim 1 be reconsidered and withdrawn for at least this additional reason.

12. Independent claim 108, as amended, recites, in part, “wherein said first and second protuberances extend from said housing such that a longitudinal axis of the first protuberance and a longitudinal axis of the second protuberance are at opposing angles of about 45 degrees

relative to an implant axis.” (*see*, Applicant’s claim 108, above). As such, Applicant respectfully submits that independent claim 108 is allowable over the cited references for at least similar reasons to those discussed above with reference to independent claim 1.

***Dependent claims***

13. The dependent claims incorporate all the subject matter of their respective independent claims and add additional subject matter which makes them independently patentable over the art of record. Accordingly, Applicant respectfully asserts that the dependent claims are also allowable over the art of record.

***Conclusion***

14. In view of the foregoing, this application should be in condition for allowance. A notice to his effect is respectfully requested.

15. Applicant reserves the right to pursue any cancelled claims or other subject matter disclosed in this application in a continuation or divisional application, cancellations and amendments of above claims, therefore, are not to be construed as an admission regarding the patentability of any claims and Applicant reserves the right to pursue such claims in a continuation or divisional application.

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Respectfully submitted,

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